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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,
 Debtor.

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

**DEBTOR'S MOTION TO RETURN
 INVESTOR FUNDS HELD IN
 ESCROW
 (AFFECTS USA COMMERCIAL
 MORTGAGE COMPANY)**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Date: December 19, 2006
 Time: 9:30 a.m.

USA Commercial Mortgage Company (“USACM”), one of the debtors in the above-captioned jointly administered chapter 11 bankruptcy cases, hereby moves this Court for authority to return to two investors a total of \$250,000 that is being held by Chicago Title Company (“CTC”) in an escrow account, and declaring null and void a third amendment to a trust deed that was mistakenly recorded on property located in Riverside County, California.

STATEMENT OF FACTS

1. On April 13, 2006 (the “Petition Date”), USACM and its above-captioned affiliates (collectively, the “Debtors”) filed petitions for relief under chapter 11 of the Bankruptcy Code. By order entered June 9, 2006, the Court approved the joint administration of the Debtors’ bankruptcy cases.

2. In March of 2006, USACM, acting as a mortgage broker, obtained \$200,000 from Robert G. Berry Jr. and Jeannette K. Berry, husband and wife, as joint tenants with the right of survivorship (“Berrys”), and \$50,000 from Vivien C. Bonzo, an unmarried woman, and Sonia Rodriguez, an unmarried woman, as joint tenants with the right of survivorship (“Bonzo/Rodriguez”) (the Berrys and Bonzo/Rodriguez shall collectively be referred to as the “Two Investors”), for a total of \$250,000, which was intended to be invested as an additional advance on a loan to Bundy Canyon Land Development, LLC (“Borrower”) known as the “Bundy Canyon \$7.5 Million Loan” which is secured by real property in Riverside County, California (the “Property”).

3. The loan documents indicate that the Bundy Canyon \$7.5 Million Loan was to be for a principal amount of up to \$7,500,000 and the initial principal amount of \$4,900,000 was funded on or about August 17, 2005, as evidenced by a Promissory Note of even date therewith, which was secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing covering the Property, which was recorded on August 25, 2005, as Document No. 2005-0698067 in the Official Records of Riverside County, California.

4. An additional principal amount of \$1,300,000 was funded on the Bundy Canyon \$7.5 Million Loan on or about September 27, 2005, increasing the total principal amount to \$6,200,000, as evidenced by a Promissory Note of even date therewith. In addition, a First

1 Amendment to Deed of Trust which increased the amount secured thereby, as well as added some
2 additional collateral, was recorded on September 28, 2005, as Document No. 2005-0801955 in the
3 Official Records of Riverside County, California.

4 5. An additional principal amount of \$250,000 was funded on the Bundy Canyon
5 \$7.5 Million Loan or about December 19, 2005, increasing the total principal amount to
6 \$6,450,000, as evidenced by a Promissory Note of even date therewith. In addition, a Second
7 Amendment to Deed of Trust which increased the amount secured thereby was recorded on
8 January 9, 2006, as Document No. 2006-0017133 in the Official Records of Riverside County,
9 California.

10 6. In or about March of 2006, it was contemplated that the amount to be funded for
11 the Bundy Canyon \$7.5 Million Loan, would be increased by an additional \$250,000, bringing the
12 total principal amount owing thereon to \$6,700,000 million. The additional \$250,000 in funding
13 was provided by the Two Investors, as indicated in paragraph 2 above.

14 7. The \$250,000 from the Two Investors was sent to CTC to be held in escrow
15 pending the recordation of a third amendment to the original deed of trust and the issuance of
16 directions to release the funds to the Borrower.

17 8. On April 11, 2006, CTC sent an executed Third Amendment to Deed of Trust to
18 Orange Coast Title Company with instructions to "Abstract and Hold, Escrow Will Advise."

19 9. Shortly thereafter, CTC learned of the Debtors bankruptcy filing and determined
20 that it should not release the \$250,000 in funds being held in escrow to the Borrower, nor issue
21 instructions for the Third Amendment to Deed of Trust to be recorded.

22 10. However, on June 13, 2006, Orange Coast Title Company mistakenly caused the
23 Third Amendment to Deed of Trust to be recorded in the Official Records of Riverside County,
24 California, as Document No. 2006-0424274.

25 11. As of the Petition Date, and at all times thereafter, the additional \$250,000 in
26 funding has been held in an escrow account at CTC and has not been released to the Borrower.

27 12. CTC has informed USACM that due to the pending bankruptcy case of USACM,
28 CTC will not release the funds to either the Borrower or USACM without an order of this Court.

1 the Third Amendment to Deed of Trust, a copy of which is attached to the Allison Declaration as
2 Exhibit D be cancelled in its entirety and be void and of no further force and effect; (4) authorizing
3 a copy of such order (or such other document as may be required) to be recorded in the real
4 property records of Riverside County, California to effectuate the cancellation of the Third
5 Amendment to Deed of Trust; and (5) granting such other legal and/or equitable relief as is just
6 and proper.

7 Respectfully submitted this 20th day of November, 2006.

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9
10 /s/ Jeanette E. McPherson

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